



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

Empire Services, Inc.

FOR

Empire Services, Inc.'s

James City County Recycling and Suffolk Recycling Facilities

VPDES Permit No. VAR05

Storm Water Registration No. VAR051899

Storm Water Registration No. VAR052089

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Empire Services, Inc., regarding the James City County Recycling and Suffolk Recycling Facilities, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CSCE" means comprehensive site compliance evaluation.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Empire Services" means Empire Services, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Empire Services is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Facilities" means the two feeder yards for recyclable metals located at 8952 Richmond Road in Toano, Virginia (James City County Recycling) and 277 Suburban Drive in Suffolk, Virginia (Suffolk Recycling), from which discharges of stormwater to surface waters associated with industrial activity occur.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

14. "Permit" means VPDES General Permit for Stormwater Discharges Associated with Industrial Activity VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Empire Services applied for registration under the Permit and was issued Registration Nos. VAR051899 (James City County Recycling) and VAR052089 (Suffolk Recycling) on July 1, 2014.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Registration statement" means a registration statement for coverage under a storm water general permit.
18. "Regulation" means the VPDES General Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "SWPPP" means Stormwater Pollution Prevention Plan.
22. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Empire Services owns and operates the Facilities, which discharge stormwater associated with industrial activity. At the Facilities, metals are stored, sorted, cut, and bailed onsite. Vehicles also are drained and dismantled onsite. Cut and bailed materials are then transported to other facilities for processing.
2. The Permit allows Empire Services to discharge stormwater associated with industrial activity from the Facilities to Edwards Swamp (James City County Recycling) and Shingle Creek (Suffolk Recycling), in strict compliance with the terms and conditions of the Permit.
3. Edwards Swamp is a class III receiving stream. Edwards Swamp has not been assessed for aquatic life, recreational, or wildlife uses, and is fully supporting for fish consumption use.
4. Shingle Creek is a tributary to the Nansemond River and located in the James River Basin watershed. Shingle Creek is listed in DEQ's 305(b) report as impaired for enterococcus, dissolved oxygen, fecal coliform, pH, PCB in fish tissue, and aquatic plants. Industrial point source discharges, loss of riparian habitat, municipal point source discharges, and wet weather discharges from point sources are among the sources of impairment.
5. Part I.A.1.b of the Permit requires that Empire Services conduct benchmark monitoring of storm water discharges from the Facilities' storm water outfalls for the presence of pollutants of concern once during each benchmark monitoring period and record benchmark monitoring results on a DMR.
6. Part I.A.2 of the Permit provides monitoring instructions for collecting and analyzing stormwater samples.
7. Part I.A.6.a(1) of the Permit provides that if benchmark monitoring results exceed the benchmark concentration value, Empire Services shall review and modify the SWPPP as necessary to address any deficiencies that may have caused the exceedance.
8. Part I.B.2 of the Permit provides that Empire Services shall prevent or minimize oil in stormwater discharging from the Facilities.

9. VA Code § 62.1-44.34:18 prohibits the discharges of oil into or upon state water lands or storm drain systems.
10. Part IB.7.b of the Permit provides requirements for monitoring stormwater discharges to surface waters that are subject to the Chesapeake Bay total maximum daily load (TMDL) allocations.
11. During DEQ Facility inspections on October 1, 2015 (Suffolk Recycling) and February 23, 2016 (James City County Recycling), DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit:
 - a. Benchmark and Chesapeake Bay TMDL monitoring had not been performed or documented for the first semi-annual 2015 monitoring period, as required by Parts I.A.1.b, I.A.2, and I.B.7.b of the Permit.
 - b. The benchmark monitoring records for prior monitoring periods showed exceedances of benchmark levels but the SWPPP had not been reviewed or modified as necessary to address any deficiencies that may have caused the exceedances, as required by Part I.A.6.a(1) of the Permit. Nor was a justification provided in the CSCE as to why the SWPPP did not need modification.
 - c. Materials were not being managed onsite to prevent or minimize oil from discharging in stormwater from the Facilities (e.g. through good housekeeping), in violation of Part I.B.2 of the Permit:
 - i. Oil sheens were observed throughout discharge areas;
 - ii. Oil-stained soil had not been cleaned up to prevent stormwater contamination; and
 - iii. Oil and oil-contaminated runoff was discharging from unauthorized Outfalls and other locations not listed in the SWPPP as discharge points.
12. Empire Services has violated conditions in Part I.A.1.a, Part I.A.1.b, Part I.A.2, Part I.A.6a(1), Part I.B.2, and Part I.B.7.b of the Permit, and VA Code § 62.1-44.34:18, as noted in paragraph C(11) of this Order.
13. Part II.A of the Permit requires that Empire Services measure and monitor samples according to procedures approved in 40 CFR Part 136.
14. Part II.B of the Permit provides that Empire Services shall include in monitoring records the date and time of sampling, who sampled, date and time of sample analysis, and analytical techniques or methods used.

15. According to letters received by DEQ December 7, 2015 and January 19, 2016, Empire Services identified sampling and monitoring techniques that do not comply with sampling and monitoring techniques, as required in Part II.A and Part II.B of the Permit.
16. Empire Services has violated conditions Part II.A and Part II.B of the Permit as noted in paragraph C(15) of this Order.
17. Empire Services is required to develop and implement a Facility SWPPP according to requirements outlined in Part III of the Permit.
18. Part III.B.2.c of the Permit requires that the Facility SWPPP include a site map that identifies, among other things, the size of the Facility, location of potential pollution sources, and all storm water conveyances.
19. Part I.B.11 of the Permit requires that Empire Services add new or delete existing stormwater outfalls at the Facility as necessary and appropriate, and update the SWPPP and notify DEQ within 30 days.
20. Part III.B.4.b.(1) of the Permit requires that Empire Services keep clean all areas of the Facility exposed to stormwater that are potential sources of pollutants to stormwater discharges.
21. Part III.B.4.b.(6) of the Permit requires that Facility employees be trained in storm water pollution prevention, and training sessions be documented in the SWPPP.
22. Part III.B.4.b.(7) of the Permit states that the SWPPP shall identify areas at the Facility that have the potential for soil erosion, and implement structural, vegetative, and stabilization control measures to prevent or control erosion and sedimentation.
23. Part III.B.5 of the Permit requires that Empire Services conduct routine Facility inspections at a minimum quarterly for all industrial areas exposed to stormwater, and at least once each year when a stormwater discharge is occurring.
24. Part III.B.5.a-h of the Permit requires that Empire Services document the results of inspections in the SWPPP and include the inspection date and time, names and signatures of inspectors, and weather information.
25. Part III.E.3 of the Permit requires that Empire Services write a report summarizing the scope of the CSCE.
26. Part III.G of the Permit requires that Empire Services review and amend the SWPPP as appropriate whenever the Facility changes design, operations, or maintenance affecting

discharges, or whenever an inspection by state officials determines that modifications are necessary.

27. During DEQ Facility inspections on October 1, 2015 (Suffolk Recycling) and February 23, 2016 (James City County Recycling), DEQ staff documented compliance deficiencies with respect to the SWPPP requirements of the Permit, including the following:

- a. The SWPPP had not been modified or updated to comply with the 2014 Permit (e.g. the SWPPP had not been updated to report sampling frequency and identify pollution prevention team members), as required by Part III of the Permit.
- b. The Facility site map contained in the Facility SWPPP did not properly identify:
 - i. All storm water conveyances from the Facility, as required by Part III.B.2.c(3) and Part I.B.11 of the Permit;
 - ii. The size of the Facility, as required by Part III.B.2 of the Permit;
 - iii. The location of potential pollution sources, as required by Part III.B.2 of the Permit;
 - iv. The location of major spills and leaks, as required by Part III.B.2 of the Permit;
 - v. Changes in operations, as required by Part III.B.2 of the Permit; and
 - vi. The areas previously non-industrial that now have industrial activity, as required by Part III.B.2.c(3) and Part I.B.11 of the Permit.
- c. Stormwater controls, such as good housekeeping, had not been implemented, as required by Part III.B.4.b.(1) of the Permit:
 - i. Drop inlets were filled with solids and lacked controls or a drainage swale to prevent solids from discharging to outfalls;
 - ii. Discharges were extremely turbid and heavily laden with solids;
 - iii. Two work pads were observed with oil floating on the water surface, the areas around these pads were soaked with oil, soils from the work pad area were dug out and discarded in an open area where stormwater could capture and carry it offsite);
 - iv. At least one engine was observed on the ground leaking oil without any containment or controls.

- d. Annual employee training had not been performed and documented in the SWPPP for 2014, as required by Part III.B.4.b.(6) of the Permit.
 - e. The Facility had exposed soils that had not been stabilized and showed observable erosion to the perimeter ditch and pond, in violation of Part III.B.4.b.(7) of the Permit.
 - f. Routine Facility inspections did not meet the requirements in Part III.B.5 of the Permit:
 - i. At least one routine Facility inspection had not been conducted during a rain event for 2014;
 - ii. The inspection frequency was not provided for September 2015;
 - iii. The inspection records for July and August 2015 reported no problems at the Facility when leaks, spills, and stains were apparent and would require corrective action;
 - iv. The inspection records did not include all areas where industrial materials or activities were exposed to stormwater, accurately reflect site conditions, or document time, signature, weather, discharges, best management practices or control measures, incidences of non-compliance, or the dismantling area;
 - v. The inspection records did not have recorded weather data, or the time, name, and signature of the Facility personnel conducting the inspections;
 - vi. The inspection records indicated that corrective action was taken but did not indicate why.
 - g. The 2014 CSCE and summary report had not been documented, and a justification was not provided in the CSCE as to why SWPPP modification was not needed, as required by Part III.E and III.G of the Permit.
28. Based on the results of the October 1, 2015 and February 23, 2016 inspections, the Board concludes that Empire Services has violated conditions Part III.B.2.c(3), Part I.B.11, Part III.B.4.b.(1), Part III.B.4.b.(6), Part III.B.4.b.(7), Part III.B.5, Part III.B.5.a-h, Part III.G, and Part III.E.3 of the Permit as noted in paragraph C(27) of this Order.
29. TRO issued NOV No. W2015-12-T-0004, dated December 4, 2015, and NOV No. W2016-04-T-0001, dated April 8, 2016, for the violations noted above.

30. Empire Services responded to the December NOV by indicating that it had hired an environmental consultant to update the SWPPP, which DEQ received on January 14, 2016. Empire Services also indicated that it had regraded areas to eliminate unauthorized discharges, including use of hay bales and oil absorbent berms, constructed a metal building over the car-draining machine to eliminate exposure to runoff, and implemented training to prevent and cleanup spills. Empire Services responded to the April NOV by email dated June 13, 2016 providing an updated SWPPP and indicating that it had performed necessary repairs to stormwater controls.
31. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
32. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
33. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
34. The Department has issued coverage under no permits or certificates to Empire Services other than under VPDES Permit No. VAR05.
35. Edwards Swamp and Shingle Creek are surface waters located wholly within the Commonwealth and are “state water” under State Water Control Law.
36. Based on the results of the October 1, 2015 (Suffolk Recycling) and February 23, 2016 (James City County Recycling) inspections and documentation submitted on December 7, 2015, January 19, 2016, and June 13, 2016, the Board concludes that Empire Services has violated the Permit, as described in paragraphs C(11), C(15), and C(27), above.
37. In order for Empire Services to return to compliance, DEQ staff and Empire Services have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Empire Services, and Empire Services agrees to:

1. Perform the actions described in Appendix A of this Order.
2. Pay a civil charge of \$14,394.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Amount</u>
November 30, 2017	\$4,394
December 29, 2017	\$2,500
January 31, 2018	\$2,500
February 28, 2018	\$2,500
March 30, 2018	\$2,500

3. If the Department fails to receive a civil charge payment pursuant to the schedule described in the above paragraph D.2, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this Order by Empire Services. Empire Services shall pay the entire remaining balance within 15 days of the receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
4. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

5. Empire Services shall include its Federal Employer Identification Number (FEIN) _____ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Empire Services shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Empire Services for good cause shown by Empire Services, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2015-12-T-0004, dated December 4, 2015, and NOV No. W2016-04-T-0001, dated April 8, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Empire Services admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Empire Services consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Empire Services declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Empire Services to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Empire Services shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Empire Services shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Empire Services shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Empire Services. Nevertheless, Empire Services agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Empire Services has completed all of the requirements of the Order;
 - b. Empire Services petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Empire Services.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Empire Services from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Empire Services and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Empire Services certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Empire Services to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Empire Services.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

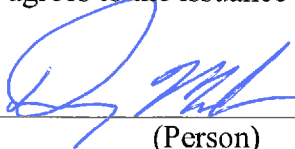
15. By its signature below, Empire Services voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23 day of October, 2017.



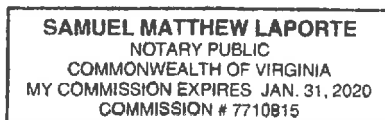
Craig R. Nicol, Regional Director
Department of Environmental Quality

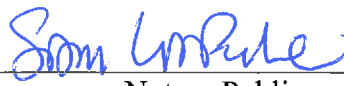
Empire Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/24/17 By:  _____
(Person) (Title)
Empire Services, Inc.

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 24th day of August, 2017, by Danny Meeks who is Manager/President of Empire Services, Inc., on behalf of the corporation.





Notary Public
7710815

Registration No.

My commission expires: 01/31/2020

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

Empire Services shall:

1. Within 30 days of the effective date of this Order, update the SWPPP to identify all outfalls at the Facility and immediately cease any unauthorized discharges.
2. Within 30 days of the effective date of this Order, submit to DEQ TRO certification that all staff who are responsible for implementing activities identified in the SWPPP or otherwise responsible for stormwater management have been trained and that the training includes all components required by the Permit and the SWPPP.
3. Within 30 days of the effective date of this Order, submit to DEQ TRO a comprehensive site compliance evaluation report to ensure compliance with the Permit and the SWPPP.
4. Within 60 days of the effective date of this Order, submit to DEQ TRO for review and approval an updated SWPPP that contains all elements required by Part III.B of the Permit.
5. Within 60 days of the effective date of this Order, submit to DEQ for review and approval a corrective action plan ("CAP") that describes:
 - a. Actions Empire Services has taken or plans to take to comply consistently with sampling and monitoring requirements set forth in Part II.A and Part II.B of the Permit.
 - b. A plan to clean up oil at the Facility, including oil sheens observed in discharge areas, oil-stained soil, oil leaking from any engines, and oil contamination from work pads and the work pad areas.
 - c. Actions to stabilize areas with disturbed or exposed soil at the Facility.
6. Mail all submittals and reports required by this Appendix A to:

Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462